

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

Contempt Petition No.76 of 2007
in
Writ Petition No.1845 of 1995

1. Shri Laxminarayan R.Bhattad
and others ..Petitioners

vs.

1. State of Maharashtra & Ors. ..Respondents

Mr.Simil Purohit i/b M/s Vimadalal and Co. for
petitioners.

Mr.K.R.Belosey, A.G.P. for respondent no.1.

Mr.V.M.Parshuram for respondent no.3.

Mr.A.Y.Sakhare with Ms.S.Ajithkumar for respondent
Municipal Corporation.

CORAM: S.C.DHARMADHIKARI J
8th October, 2007

P.C.

1. Writ Petition no.1845 of 2005, in which this Contempt Petition has been taken out, was placed before the Division Bench of this Court as early as in 1996. The prayer therein was that final No Objection Certificate and approval to the Development Scheme of the petitioner in respect of the property bearing CTS No.181 and 186 of Parel Sewree Division, Sewree, Mumbai with FSI 2 be granted and further to direct the Corporation to sanction the building plans. This writ petition was disposed of by this Court by order dated 12th April, 1996. In paras 6 and 7 of the order this is what

is observed by the division Bench.

"6. It appears that petitioners sought MHADA's No Objection Certificate for redevelopment of their said property containing structures constructed prior to 1940 or cessed structures. By a letter dated 7th September, 1991 (Exhibit E-1 to the petition), the Bombay housing and Area Development Board stipulated the conditions to be fulfilled by the petitioners for grant of the NOC for utilisation of FSI 2.

7. There are 138 tenements in the cessed strcutres and 173 tenants and sub-tenants in the non cessed structures. The petitioners have secured teh consent of the tenants of 135 of the tenements in the cessed structures (i.e. more than 99 per cent of the total tenaments in the cessed structures) and have also entered into agreement in respect of 127 of the tenaments (93.38 per cent of the total tenements in the cessed structures). Two of the tenaments are presently being used as a chawl office and are accordingly not included. These agreements record that the

carpet area presently occupied by each of the tenants of the cessed structures is 11.00 sq.meters : 13.05 sq.meters of built up area. The directives provide that the tenants should be provided their existing area of a minium area of 16.9 sq.meters. Under the agreements, the petitioners shall be providing each tenant of the cessed building with premises admeasuring 21.32 saq.meters of built up area i.e. substantially more than the area presently occupied by them."

2. There are certain compliances to be made by the parties to the writ petition which are more specifically recorded in the order.

3. A contempt petition was taken out in this petition complaining that the order passed by this Court has not been implemented. That contempt petition was disposed of on 19th January, 1998 by this Court recording a statement that fresh N.O.C. would be issued to the petitioners as per order dated 12th April, 1996.

4. The correspondence ensued between the parties and it appears that another writ petition being

writ petition no.1022 of 2000 was filed in this Court and the complaint in the said petition was with regard to inaction on the part of the present contempnors (MHADA) to initiate action under sec.95A of the Maharashtra Housing and Area Development Act. Thereafter writ petition no.264 of 2003 was taken out and more or less similar reliefs have been claimed. However, while disposing of that writ petition on 3rd October, 2003, a statement was recorded by this Court which reads as under:

"1. Now that the encroachments are completely removed, the respondent builder can commence the building activity. He should complete the same within three years of the commencement certificate.

2. Certain complaints were made regarding the availability of toilet facility for those non est citizens occupying the nearby areaa. The statement is made on behalf of the respondent builder that till adequate alternate arrangement of four toilet is made, the present four toilet facility would not be demolished."

5. Once again the grievances were made with regard to non compliance of that order as well. There are letters addressed by the Advocates on behalf of the petitioners and on 13th January, 2006, there is a communication from respondent no.3 which reads thus:

"Gentlemen,

With reference to the above subject matter, you are informed that the issue of the execution of an agreement is to be sorted out between yourselves only and the MBRRB cannot have any say in the matter.

Further you are informed that as per the modified provision of the DCR 33(7) an irrevocable written consent of the minimum 70% occupiers with the provision of min 225.00 sq.ft. carpet area in the prescribed format will have to be submitted to this office, if you both fail to execute an agreement (the xerox copy of the draft of consent is enclosed herewith.)

In the said communication it is alleged that such communication led to stop work notices being issued

by the Bombay Municipal Corporation. It is this development that led to the earlier petition (writ petition no.264 of 2003) being filed. Therefore, on 10th March, 2003, this Court recorded the fact that section 95 A will have to be resorted to and further directed as under:

"Ms.Sanglikar states that as such commencement certificate is issued in stages and therefore as soon as one building is demolished, the Municipal Corporation will see to it that the commencement certificate for reconstruction of the building on that particular portion is issued at the earliest in accordance with the Rules."

On the basis of the statement of the Counsel appearing for the B.M.C., that the commencement certificate will be issued in accordance with the rules at the earliest, that this contempt petition alleging non compliance of the order passed on 12th April, 1996 in Writ Petition No.1845 of 1995, 4th July, 2000 in Writ Petition No.1022 of 2000 and 3rd October, 2003 in Writ Petition No.264 of 2003 so also stop work notices issued in November, 2004, December, 2006 and April, 2007 is instituted.

6. The grievance is that despite the directions of this Court and the statements recorded therein, the commencement certificate is not being issued and stop work notices are instead repeatedly sent which has resulted in hampering the development at site.

7. After perusing the contempt petition and annexures thereto, including the reply forwarded by B.M.C. and rejoinder of petitioner no.1 thereto, I am of the opinion that this contempt petition is not a remedy for the petitioners herein. If they have any grievance with regard to stop work notices and the stand taken by the authorities, their remedy is to initiate substantive proceedings. However, without going into the controversy with regard to the issuance of the stop work notices and alleging inaction on the part of the authorities in taking steps under sec.95A of the MHADA Act and the rights of the occupants at site, it would be appropriate if this petition is disposed of by directing that the petitioners can approach the B.M.C. with a representation calling upon it to withdraw all stop work notices and issue the commencement certificate as sought for and stipulated in this Court's order. If such a representation is made within a period of two weeks from today, the Corporation shall decide the same

in accordance with law and pass order/take a decision thereon and communicate the same to the petitioners within a period of four weeks from the date of receipt thereof.

8. Although Mr.Belosey and Mr.Parshuram appearing for responmdent nos.2 and 3 stated on instructions that due compliance has been made with this Court's order directing action under sec.95A of the Act, these statements are being made across the bar and no details thereof are placed on affidavit. In such circumstances, it would be proper if the petitioners approach respondent nos. 2 and 3 as well with a request in writing to initiate such steps as are necessary in accordance with law. The authorities to take cognisance of that request as well and communicate their decision to the petitioners within a period of 4 weeks from today.

9. The contempt petition is disposed of accordingly.

10. Needless to state that this Court has not gone into the rival contentions on behalf of both sides and they are being kept open for being adjudicated upon in appropriate proceedings.

(S.C.DHARMADHIKARI J.)